

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ELLA PAUP PROPERTIES,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)
)

PCHB No. 964

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
WAND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged illegal smoke emission, having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 5th day of April, 1976, at Seattle, Washington, and appellant Ella Paup Properties being represented by its manager, Martin Paup, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, and the Board having heard the testimony, examined the exhibits, records and files herein and having entered on the 19th day of April, 1976, its proposed Findings of Fact, Conclusions of Law

1 and Order, and the Board having served said proposed Findings,
2 Conclusions and Order upon all parties herein by certified mail, return
3 receipt requested and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order and the Board being fully advised in the premises;
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order dated the 19th day of
9 April, 1976, and incorporated by reference herein and attached hereto
10 as Exhibit A, are adopted and hereby entered as the Board's Final
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 4th day of June, 1976.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith
15 CHRIS SMITH, Chairman

16 Walt Woodward
17 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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ELLA PAUP PROPERTIES,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 964

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged illegal smoke emission, came before the Pollution Control Hearings Board (Chris Smith, Chairman, and Walt Woodward) as a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on April 5, 1976.

Appellant was represented by its Manager, Martin Paup; respondent appeared through its counsel, Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's regulations
7 and amendments thereto.

8 Section 9.03(b) of Regulation I makes it unlawful to cause or
9 allow an air contaminant emission darker in shade than No. 1 on the
10 Ringelmann Chart for more than three minutes in any one hour.

11 Section 3.29 authorizes a civil penalty of not more than \$250
12 for any violation of Regulation I.

13 II

14 On December 12, 1975, from the boiler stack of a building owned
15 by appellant at 2201-1/2 First Avenue, Seattle, King County, there was
16 emitted for seven consecutive minutes smoke darker in shade than No. 1
17 on the Ringelmann Chart. The emission, observed by an inspector on
18 respondent's staff, resulted in respondent's serving appellant with
19 Notice of Violation No. 11953, citing Section 9.03 of respondent's
20 Regulation I, and Notice of Civil Penalty No. 2648 in the amount of \$50,
21 which is the subject of this appeal.

22 III

23 Appellant began taking corrective action to prevent a recurrence
24 immediately after being notified of the incident. There now is a person
25 responsible to appellant who is assigned to monitoring the operation of
26 the boiler. In addition, a time clock which caused the boiler to cease

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 operation at night, thus causing a cold boiler startup, with the
2 likelihood of smoke emissions in the morning, was disconnected. The
3 boiler now continues to function, and remain hot, all night. This has
4 caused appellant additional expense because there has been a 15 percent
5 increase in fuel use since the time clock was disconnected. There have
6 been no more violations noted by respondent since the corrective actions
7 were taken.

8 IV

9 Any Conclusion of Law hereinafter recited which is deemed to be a
10 Finding of Fact is adopted herewith as same.

11 From these Findings, the Pollution Control Hearings Board comes
12 to these

3 CONCLUSIONS OF LAW

14 I

15 Appellant was in violation of respondent's Regulation I as cited
16 in Notice of Violation No. 11953.

17 II

18 Notice of Civil Penalty No. 2648 was reasonable.

19 III

20 Suspension of the penalty is warranted in line with this Board's
21 consistent policy to give credit for funds expended to prevent violation
22 recurrence. Appellant has spent funds in what appears to be a successful
23 effort to prevent violation.

24 IV

25 Any Finding of Fact herein recited which is deemed to be a
26 Conclusion of Law is adopted herewith as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeal is denied, but payment of the \$50 civil penalty is
4 suspended pending no similar violation for a period of nine months
5 from the date this Order becomes final.

6 DONE at Lacey, Washington this 19th day of April, 1976.

7 POLLUTION CONTROL HEARINGS BOARD

8 Chris Smith
9 CHRIS SMITH, Chairman

10 Walt Woodward
11 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER